

IC 36-8-3

Chapter 3. Safety Boards; Disciplinary Procedures

IC 36-8-3-1

Application of chapter

Sec. 1. This chapter applies to second and third class cities. It also applies to other units, where specifically indicated.

As added by Acts 1981, P.L.309, SEC.52. Amended by Acts 1981, P.L.44, SEC.55.

IC 36-8-3-2

Powers and duties of safety boards

Sec. 2. (a) The safety board of a city shall administer the police and fire departments of the city, except as provided by any statute or ordinance referred to in section 5 of this chapter.

(b) The safety board has exclusive control over all matters and property relating to the following:

- (1) Police department.
- (2) Fire department, fire alarms, and fire escapes.
- (3) Animal shelters.
- (4) Inspection of buildings.

(c) The safety board may purchase the equipment and supplies and make the repairs needed in the department of public safety.

(d) The safety board may:

- (1) adopt rules for the government and discipline of the police and fire departments; and
- (2) adopt general and special orders to the police and fire departments through the chiefs of the departments.

As added by Acts 1981, P.L.309, SEC.52. Amended by Acts 1982, P.L.33, SEC.35.

IC 36-8-3-3

Organization of safety boards; appointment of police officers, firefighters, and other officials

Sec. 3. (a) A majority of the members of the safety board constitutes a quorum. The board shall adopt rules concerning the time of holding regular and special meetings and of giving notice of them. The board shall elect one (1) of its members chairman, who holds the position as long as prescribed by the rules of the board. The board shall record all of its proceedings.

(b) The members of the safety board may act only as a board. No member may bind the board or the city except by resolution entered in the records of the board authorizing him to act in its behalf as its authorized agent.

(c) The safety board shall appoint:

- (1) the members and other employees of the police department other than those in an upper level policymaking position;
- (2) the members and other employees of the fire department other than those in an upper level policymaking position;
- (3) a market master; and

(4) other officials that are necessary for public safety purposes.

(d) The annual compensation of all members of the police and fire departments and other appointees shall be fixed by ordinance of the legislative body before:

(1) September 20 for a second class city; and

(2) September 20 for a third class city;

of each year for the ensuing budget year. The ordinance may grade the members of the departments and regulate their pay by rank as well as by length of service. If the legislative body fails to adopt an ordinance fixing the compensation of members of the police or fire department, the safety board may fix their compensation, subject to change by ordinance.

(e) The safety board, subject to ordinance, may also fix the number of members of the police and fire departments and the number of appointees for other purposes and may, subject to law, adopt rules for the appointment of members of the departments and for their government.

(f) The safety board shall divide the city into police precincts and fire districts.

(g) The police chief has exclusive control of the police department, and the fire chief has exclusive control of the fire department, subject to the rules and orders of the safety board. In time of emergency, the police chief and the fire chief are, for the time being, subordinate to the city executive and shall obey his orders and directions, notwithstanding any law or rule to the contrary.

As added by Acts 1981, P.L.309, SEC.52. Amended by Acts 1981, P.L.315, SEC.1; Acts 1982, P.L.33, SEC.36; P.L.35-1999, SEC.7; P.L.125-2001, SEC.6; P.L.173-2003, SEC.31.

IC 36-8-3-4

Police officers and firefighters; discipline, demotion, and dismissal; hearings; appeals; administrative leave

Sec. 4. (a) This section also applies to all towns and townships that have full-time, paid police or fire departments. For purposes of this section, the appropriate appointing authority of a town or township is considered the safety board of a town or township. In a town with a board of metropolitan police commissioners, that board is considered the safety board of the town for police department purposes.

(b) Except as provided in subsection (m), a member of the police or fire department holds office or grade until the member is dismissed or demoted by the safety board. Except as provided in subsection (n), a member may be disciplined by demotion, dismissal, reprimand, forfeiture, or suspension upon either:

(1) conviction in any court of any crime; or

(2) a finding and decision of the safety board that the member has been or is guilty of any one (1) or more of the following:

(A) Neglect of duty.

(B) A violation of rules.

(C) Neglect or disobedience of orders.

- (D) Incapacity.
- (E) Absence without leave.
- (F) Immoral conduct.
- (G) Conduct injurious to the public peace or welfare.
- (H) Conduct unbecoming an officer.
- (I) Another breach of discipline.

The safety board may not consider the political affiliation of the member in making a decision under this section. If a member is suspended or placed on administrative leave under this subsection, the member is entitled to the member's allowances for insurance benefits to which the member was entitled before being suspended or placed on administrative leave. In addition, the local unit may provide the member's allowances for any other fringe benefits to which the member was entitled before being suspended or placed on administrative leave.

(c) Before a member of a police or fire department may be suspended in excess of five (5) days without pay, demoted, or dismissed, the safety board shall offer the member an opportunity for a hearing. If a member desires a hearing, the member must request the hearing not more than five (5) days after the notice of the suspension, demotion, or dismissal. Written notice shall be given either by service upon the member in person or by a copy left at the member's last and usual place of residence at least fourteen (14) days before the date set for the hearing. The hearing conducted under this subsection shall be held not more than thirty (30) days after the hearing is requested by the member, unless a later date is mutually agreed upon by the parties. The notice must state:

- (1) the time and place of the hearing;
- (2) the charges against the member;
- (3) the specific conduct that comprises the charges;
- (4) that the member is entitled to be represented by counsel;
- (5) that the member is entitled to call and cross-examine witnesses;
- (6) that the member is entitled to require the production of evidence; and
- (7) that the member is entitled to have subpoenas issued, served, and executed in the county where the unit is located.

If the corporation counsel or city attorney is a member of the safety board of a city, the counsel or attorney may not participate as a safety board member in a disciplinary hearing concerning a member of either department. The safety board shall determine if a member of the police or fire department who is suspended in excess of five (5) days shall continue to receive the member's salary during the suspension.

(d) Upon an investigation into the conduct of a member of the police or fire department, or upon the trial of a charge preferred against a member of either department, the safety board may compel the attendance of witnesses, examine them under oath, and require the production of books, papers, and other evidence at a meeting of the board. For this purpose, the board may issue subpoenas and have

them served and executed in any part of the county where the unit is located. If a witness refuses to testify or to produce books or papers in the witness's possession or under the witness's control, IC 36-4-6-21 controls to the extent applicable. The proper court may compel compliance with the order by attachment, commitment, or other punishment.

(e) The reasons for the suspension, demotion, or dismissal of a member of the police or fire department shall be entered as specific findings of fact upon the records of the safety board. A member who is suspended for a period exceeding five (5) days, demoted, or dismissed may appeal the decision to the circuit or superior court of the county in which the unit is located. However, a member may not appeal any other decision.

(f) An appeal under subsection (e) must be taken by filing in court, within thirty (30) days after the date the decision is rendered, a verified complaint stating in concise manner the general nature of the charges against the member, the decision of the safety board, and a demand for the relief asserted by the member. A bond must also be filed that guarantees the appeal will be prosecuted to a final determination and that the plaintiff will pay all costs adjudged against the plaintiff. The bond must be approved as bonds for costs are approved in other cases. The unit must be named as the sole defendant, and the plaintiff shall have a summons issued as in other cases against the unit. Neither the safety board nor the members of it may be made parties defendant to the complaint, but all are bound by service upon the unit and the judgment rendered by the court.

(g) In an appeal under subsection (e), no pleading is required by the unit to the complaint, but the allegations are considered denied. The unit may file a motion to dismiss the appeal for failure to perfect it within the time and in the manner required by this section. If more than one (1) person was included in the same charges and in the same decision of dismissal by the safety board, then one (1) or more of the persons may join as plaintiffs in the same complaint, but only the persons that appeal from the decision are affected by it. The decision of the safety board is final and conclusive upon all persons not appealing. The decision appealed from is not stayed or affected pending the final determination of the appeal, but remains in effect unless modified or reversed by the final judgment of the court.

(h) A decision of the safety board is considered prima facie correct, and the burden of proof is on the party appealing. All appeals shall be tried by the court. The appeal shall be heard de novo only upon any new issues related to the charges upon which the decision of the safety board was made. The charges are considered to be denied by the accused person. Within ten (10) days after the service of summons the safety board shall file in court a complete transcript of all papers, entries, and other parts of the record relating to the particular case. Inspection of these documents by the person affected, or by the person's agent, must be permitted by the safety board before the appeal is filed, if requested. Each party may produce evidence relevant to the issues that it desires, and the court shall review the

record and decision of the safety board upon appeal.

(i) The court shall make specific findings and state the conclusions of law upon which its decision is made. If the court finds that the decision of the safety board appealed from should in all things be affirmed, its judgment should state that, and judgment for costs shall be rendered against the party appealing. If the court finds that the decision of the safety board appealed from should not be affirmed in all things, then the court shall make a general finding, setting out sufficient facts to show the nature of the proceeding and the court's decision on it. The court shall either:

(1) reverse the decision of the safety board; or

(2) order the decision of the safety board to be modified.

(j) The final judgment of the court may be appealed by either party. Upon the final disposition of the appeal by the courts, the clerk shall certify and file a copy of the final judgment of the court to the safety board, which shall conform its decisions and records to the order and judgment of the court. If the decision is reversed or modified, then the safety board shall pay to the party entitled to it any salary or wages withheld from the party pending the appeal and to which the party is entitled under the judgment of the court.

(k) Either party shall be allowed a change of venue from the court or a change of judge in the same manner as such changes are allowed in civil cases. The Indiana Rules of Trial Procedure govern in all matters of procedure upon the appeal that are not otherwise provided for by this section.

(l) An appeal takes precedence over other pending litigation and shall be tried and determined by the court as soon as practical.

(m) Except as provided in IC 36-5-2-13, the executive may reduce in grade any member of the police or fire department who holds an upper level policy making position. The reduction in grade may be made without adhering to the requirements of subsections (b) through (l). However, a member may not be reduced in grade to a rank below that which the member held before the member's appointment to the upper level policy making position.

(n) If the member is subject to criminal charges, the board may place the member on administrative leave until the disposition of the criminal charges in the trial court. Any other action by the board is stayed until the disposition of the criminal charges in the trial court. An administrative leave under this subsection may be with or without pay, as determined by the board. If the member is placed on leave without pay, the board, in its discretion, may award back pay if the member is exonerated in the criminal matter.

As added by Acts 1981, P.L.309, SEC.52. Amended by Acts 1981, P.L.315, SEC.2; P.L.104-1983, SEC.5; P.L.58-1989, SEC.3; P.L.265-1993, SEC.1; P.L.234-1996, SEC.1; P.L.34-1999, SEC.5.

IC 36-8-3-4.1

Certain towns and townships; reprimand or temporary suspension of members without prior hearing; review by safety board

Sec. 4.1. (a) This section also applies to all towns and townships

that have full-time, paid police or fire departments. For purposes of this section, the appropriate appointing authority of a town or township is considered the safety board of a town or township. In a town with a board of metropolitan police commissioners, that board is considered the safety board of the town.

(b) In addition to the disciplinary powers of the safety board, the chief of the department may, without a hearing, reprimand or suspend without pay a member, including a police radio or signal alarm operator or a fire alarm operator, for a maximum of five (5) working days. For the purposes of this section, eight (8) hours of paid time constitutes one (1) working day. If a chief reprimands a member in writing or suspends a member, the chief shall, within forty-eight (48) hours, notify the board in writing of the action and the reasons for the action. A member who is reprimanded in writing or suspended under this section may, within forty-eight (48) hours after receiving notice of the reprimand or suspension, request in writing that the board review the reprimand or suspension and either uphold or reverse the chief's decision. At its discretion, the board may hold a hearing during this review. If the board holds a hearing, written notice must be given either by service upon the member in person or by a copy left at the member's last and usual place of residence at least fourteen (14) days before the date set for the hearing. The notice must contain the information listed under section 4(c) of this chapter. If the decision is reversed, the member who was suspended is entitled to any wages withheld as a result of the suspension.

As added by Acts 1981, P.L.183, SEC.22. Amended by P.L.265-1993, SEC.2.

IC 36-8-3-5

Merit boards and commissions; exemption from statutory procedure

Sec. 5. Sections 3, 4, and 4.1 of this chapter do not apply to a police or fire department having a board or commission established by statute or ordinance to establish or administer policies based on merit for the appointment, promotion, demotion, and dismissal of members of the department, unless the establishing law specifically incorporates one (1) or more of those sections.

As added by Acts 1981, P.L.309, SEC.52. Amended by Acts 1981, P.L.183, SEC.23; Acts 1982, P.L.33, SEC.37.

IC 36-8-3-6

Police officers; powers and duties

Sec. 6. (a) This section applies to all municipalities.

(b) A warrant of search or arrest, issued by any judge, may be executed in the municipality by any municipal police officer, subject to the laws governing arrest and bail.

(c) The police officers of a municipality shall:

(1) serve all process within the municipality issuing from the city or town court;

- (2) arrest, without process, all persons who within view violate statutes, take them before the court having jurisdiction of the offense, and retain them in custody until the cause of the arrest has been investigated;
- (3) enforce municipal ordinances in accordance with IC 36-1-6;
- (4) suppress all breaches of the peace within their knowledge and may call to their aid the power of the municipality and pursue and commit to jail persons guilty of crimes;
- (5) serve all process issued by the legislative body of the municipality or any committee of it, or by any of the executive departments of the municipality;
- (6) serve the city or town court and assist the bailiff in preserving order in the court; and
- (7) convey prisoners to and from the county jail or station houses of the municipality for arraignment or trial in the city or town court or to the place of imprisonment under sentence of the court.

As added by Acts 1981, P.L.309, SEC.52. Amended by Acts 1982, P.L.33, SEC.38.

IC 36-8-3-7

Police officers and firefighters; special duty; school security police

Sec. 7. (a) The safety board may detail regular police officers or firefighters, or appoint and swear an additional number of special police officers or firefighters, to do special duty within the city. Regular police officers and firefighters serving special duty shall be paid the same rate per diem for this service as is paid to members of the department in their regular employment. The board may determine the compensation of persons serving special duty in all other cases.

(b) Unless the safety board designates otherwise, the special police officers are subject to the police chief and the special firefighters are subject to the fire chief. If they are employees of departments other than the police or fire department, they shall obey the rules of their respective departments and conform to its discipline and orders to the extent these do not conflict with the orders of the safety board. A person other than a regular police officer or firefighter may not wear a uniform the design of which is not easily distinguishable from or which conforms with respect to the color or design of the state police or a sheriff's patrol of the county in which the city is located or the police or fire department of the city. Special police officers and firefighters, during the term of their appointment, have those powers, privileges, and duties assigned to them by the safety board. They have these powers, privileges, and duties only while fulfilling the specific responsibilities for which the appointment is made. Persons other than regular police officers and firefighters appointed under this section may be removed by the safety board at any time without notice and without assigning any cause.

(c) The powers and duties of officers appointed to serve as

security police for school corporations include:

- (1) the protection of school personnel while on school business, including school children, employees, and members of the governing body of the school corporation; and
- (2) the protection of all school corporation property.

(d) Auxiliary firefighters directly connected with and created to augment the regular fire departments may wear a uniform the design of which is established by the safety board. Persons so appointed may be removed at any time by the board, without notice and without assigning any cause.

(e) In time of emergency the safety board may also detail members from the police or fire department for the use of any other department of the city government.

As added by Acts 1981, P.L.309, SEC.52. Amended by P.L.360-1983, SEC.1.

IC 36-8-3-8

Police department; civilian personnel; merit system

Sec. 8. (a) The safety board may employ civilian technical and clerical personnel to work with the police department as civilian radio operators, radio technicians, chemical technicians, laboratory technicians, and other civilian technical personnel and clerical personnel that are required. The safety board shall fix the salary to be paid to the civilian technical and clerical personnel subject to the budgetary procedures applicable to the department of public safety. The civilian technical and clerical personnel are not eligible to be members of any police pension fund.

(b) The safety board may establish a merit system for civilian personnel appointed under subsection (a). However, in establishing a system the safety board shall consult with the state personnel board concerning the form and content of the merit system.

As added by Acts 1981, P.L.309, SEC.52.

IC 36-8-3-9

Oaths; depositions

Sec. 9. The safety board, police chief, and fire chief may administer oaths to a person summoned in a proceeding authorized by this chapter and may take depositions under the rules or orders of the board.

As added by Acts 1981, P.L.309, SEC.52.

IC 36-8-3-10

Police departments, chiefs, and captains; powers and duties

Sec. 10. (a) The police department shall, within the city:

- (1) preserve peace;
- (2) prevent offenses;
- (3) detect and arrest criminals;
- (4) suppress riots, mobs, and insurrections;
- (5) disperse unlawful and dangerous assemblages and assemblages that obstruct the free passage of public streets,

sidewalks, parks, and places;
(6) protect the rights of persons and property;
(7) guard the public health;
(8) preserve order at elections and public meetings;
(9) direct the movement of vehicles in public ways or public places;
(10) remove all nuisances in public parks or public ways;
(11) provide proper police assistance at fires;
(12) assist, advise, and protect strangers and travelers in public ways or at transportation facilities;
(13) carefully observe and inspect all places of business under license, or required to have them; and
(14) enforce and prevent the violation of all laws in force in the city.

(b) The police chief and each captain, in his precinct, may supervise and inspect all pawnbrokers, vendors, junkshop keepers, cartmen, expressmen, dealers in secondhand merchandise, intelligence offices, and auctions. Any member of the department may be authorized by the chief in writing to exercise the same powers.

As added by Acts 1981, P.L.309, SEC.52.

IC 36-8-3-11 Repealed

(Repealed by P.L.148-1995, SEC.8.)

IC 36-8-3-12

Board members, police officers, and firefighters; elective and appointive office

Sec. 12. Members of the safety board and members of any township, town, or city (including a consolidated city) police department, fire department, or volunteer fire department (as defined by IC 36-8-12-2) may:

- (1) be candidates for elective office and serve in that office if elected;
- (2) be appointed to any office and serve in that office if appointed; and
- (3) as long as they are not in uniform and not on duty, solicit votes and campaign funds and challenge voters for the office for which they are candidates.

As added by Acts 1981, P.L.309, SEC.52. Amended by P.L.376-1985, SEC.1; P.L.347-1987, SEC.1; P.L.1-1999, SEC.83.

IC 36-8-3-13

Adoption of rules regulating performance bonds

Sec. 13. The safety board may, subject to city ordinances, adopt rules regulating the giving of bond by an appointee or class of appointees in the department for faithful performance of official duty.

As added by Acts 1981, P.L.309, SEC.52.

IC 36-8-3-14**Police and firefighters' insurance funds; creation, management, and distribution**

Sec. 14. (a) This section does not apply to second class cities.

(b) The safety board may draft an ordinance and submit it to the legislative body for the creation, management, and distribution of a police insurance fund or a firefighters' insurance fund, including a provision for retaining a certain percentage of each appointee's salary for the creation of the fund. The ordinance must prescribe the conditions of investment and who is entitled to the benefits.

As added by Acts 1981, P.L.309, SEC.52.

IC 36-8-3-15**Police officers and firefighters; exemption from militia service**

Sec. 15. (a) This section also applies to all members of a fire department organized by a town.

(b) Members of the police and fire departments are exempt from service in the militia, except in case of war, invasion, or insurrection.

As added by Acts 1981, P.L.309, SEC.52. Amended by P.L.4-1998, SEC.14.

IC 36-8-3-16**Destruction of burning buildings; recovery of damages**

Sec. 16. If a building in the city is on fire, or if a building adjacent to it is liable to take or convey fire to other buildings and cause great destruction of property, the fire chief, or his assistant acting as chief with the concurrence of the executive or of the safety board, may take down, blow up, or destroy the building or buildings. An action may not be maintained against a person for this action, but the owner of such a building may, in a civil action, recover damages from the city for its destruction.

As added by Acts 1981, P.L.309, SEC.52.

IC 36-8-3-17**Repealed**

(Repealed by P.L.104-1983, SEC.7.)

IC 36-8-3-18**Humane officers; appointment; powers and duties**

Sec. 18. A humane officer shall be appointed in every city from among the members of the police department. The humane officer shall detect and arrest persons violating humane statutes. He is entitled to the same pay as other police officers of the city and is subject to the control and discipline of the police department. If there is an incorporated humane society in the city, the humane officer shall attend the stated and special meetings of the society and shall report to it, at least once a month, on all matters relating to his duties under law for the previous month. If a humane statute or ordinance has, to his knowledge, been violated, he shall, if directed by the president of the humane society, file his affidavits before a court

charging the person violating the law with the violation.
As added by Acts 1981, P.L.309, SEC.52.

IC 36-8-3-19

Police matrons; appointment; powers and duties; accommodations; compensation; qualifications

Sec. 19. (a) The safety board may appoint a police matron, including assistants that are necessary. The matron shall receive, search, and properly care for, at the jail or station house, all female prisoners who are arrested and detained in custody in the city. The matron is not a member of the police department of the city, but has all the authority delegated to a police officer. The matron is subject to rules that are prescribed for her by the safety board or by ordinance and may be removed by the board for good cause shown.

(b) The matron shall be given proper accommodations for herself and for all prisoners under her control. She is the jailer in charge of the woman's department of the station house or jail and may summon a police officer or other person to her aid when aid is required. The matron and her assistant or assistants shall be paid the compensation or salaries that are set for other employees of the police department. The matron, or her assistant, shall attend all courts when female prisoners are to be tried and shall take charge of all female prisoners while they are awaiting trial or transfer to or from a place of detention.

(c) The matron must be at least twenty-one (21) years of age, fully qualified, and of good moral character.

As added by Acts 1981, P.L.309, SEC.52. Amended by Acts 1981, P.L.315, SEC.3.

IC 36-8-3-20

Police reserve officers

Sec. 20. (a) This section applies to counties and towns as well as cities.

(b) A unit may provide by ordinance for any number of police reserve officers.

(c) Police reserve officers shall be appointed by the same authority that appoints regular members of the department.

(d) Police reserve officers may be designated by another name specified by ordinance.

(e) Police reserve officers may not be members of the regular police department but have all of the same police powers as regular members, except as limited by the rules of the department. Each department may adopt rules to limit the authority of police reserve officers.

(f) To the extent that money is appropriated for a purpose listed in this subsection, police reserve officers may receive any of the following:

(1) A uniform allowance.

(2) Compensation for time lost from other employment because of court appearances.

(3) Insurance for life, accident, and sickness coverage.

(4) In the case of county police reserve officers, compensation for lake patrol duties that the county sheriff assigns and approves for compensation.

(g) Police reserve officers are not eligible to participate in any pension program provided for regular members of the department.

(h) A police reserve officer may not be appointed until he has completed the training and probationary period specified by rules of the department.

(i) A police reserve officer appointed by the department after June 30, 1993, may not:

(1) make an arrest;

(2) conduct a search or a seizure of a person or property; or

(3) carry a firearm;

unless the police reserve officer successfully completes a pre-basic course under IC 5-2-1-9(f).

(j) A police reserve officer may be covered by the medical treatment and burial expense provisions of the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases law (IC 22-3-7). If compensability of the injury is an issue, the administrative procedures of IC 22-3-2 through IC 22-3-6 and IC 22-3-7 shall be used to determine the issue.

(k) A police reserve officer carrying out lake patrol duties under this chapter is immune from liability under IC 34-30-12, notwithstanding the payment of compensation to the officer.

As added by Acts 1981, P.L.309, SEC.52. Amended by P.L.30-1992, SEC.6; P.L.72-1992, SEC.3; P.L.57-1995, SEC.10; P.L.1-1998, SEC.212.

IC 36-8-3-21

Police or fire department members; membership in 1977 fund required

Sec. 21. (a) Except as provided in subsection (b), this section applies to all units.

(b) This subsection does not apply to the appointment of a fire chief under a waiver under IC 36-8-4-6(c) or the appointment of a police chief under a waiver under IC 36-8-4-6.5(c). An individual may not be employed by a unit after May 31, 1985, as a member of the unit's fire department or as a member of the unit's police department unless the individual meets the conditions for membership in the 1977 fund.

(c) Notwithstanding IC 36-8-1-9, the executive of the unit may request that the 1977 fund accept the following individuals in the 1977 fund under IC 36-8-8-7(h):

(1) A fire chief appointed under a waiver under IC 36-8-4-6(c).

(2) A police chief appointed under a waiver under IC 36-8-4-6.5(c).

As added by P.L.342-1985, SEC.1. Amended by P.L.148-1992, SEC.2; P.L.213-1995, SEC.3.